



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बुधवार, 8 दिसम्बर, 1982/17 अग्रहायण, 1904

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171002, 7 दिसम्बर, 1982

संख्या 3-28/82-ई०एल०एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०-वि० स० (1 व 2/82)/82/7407, दिनांक 0 नवम्बर, 1982, संवादी भाद्र 9, 1904 (शक्), जन साधारण की सूचनार्थ प्रकाशित की जाती है।

आदेश से,
एम० एस० मुखर्जी,
मुख्य निर्वाचन अधिकारी।

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक मार्ग,
नई दिल्ली-110001.

अधिसूचना

तारीख: 30 नवम्बर, 1982

9 अग्रहायण, 1904 (शक्)

सं० 82/हि० प्र०-वि० सं० (1 व 2/82)/82.—लोक प्रतिनिधित्व अधिनियम, 1951(1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1982 की निर्वाचन अर्जी सं० 1 और 2 में हिमाचल प्रदेश उच्च-न्यायालय के तारीख 26 अक्तूबर, 1982 का निर्णय एतद्द्वारा प्रकाशित करता है।

आदेश से,
श्री० ना० नागर,
अवर सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

*Nirvachan Sadan,
Ashok Road,
New Delhi-110001.
Dated; 30 November, 1982
9 Agrahayana, 1904 (Saka)*

NOTIFICATION

No. 82/HP-LA (1 & 2/82)/82.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated the 26th October, 1982 of the High Court of Himachal Pradesh at Simla in Election Petition Nos. 1 and 2 of 1982.

Election Petition No. 1 of 82

and

Election Petition No. 2 of 82

October 26, 1982

(E.P. No. 1/82) Shri Dalip Singh Vs. Shri Verinder Kumar
(E.P. No. 2/82) Shri Yog Raj Vs. Shri Verinder Kumar & others.

T. R. HANDA, J.

*M/s Inder Singh, P. N. Nag, R. K. Sharma Bhawani
Singh and Dev Raj, Advocates.*

M/s P. S. Lekhi and S.S. Mittal, Advocates.

T. R. HANDA.

This judgment would dispose of the two connected petitions filed under section 81 read with sections 100 and 101 of the Representation of People Act, 1951 (hereinafter referred to as 'the Act')

and which have been registered as Election Petition No. 1 of 1982 and Election Petition No. 2 of 1982 on the file of this court.

The brief facts of this case are that there were as many as seven candidates who contested the election to the Himachal Pradesh State Assembly from 39—Pragpur (Scheduled Caste) Assembly Constituency held in May, 1982. They include Shri Dalip Singh, the petitioner in Election Petition No. 1 of 1982, Shri Yog Raj, the petitioner in Election Petition No. 2 of 1982 and Shri Verinder Kumar the common respondent in both these petitions. The other four candidates have been arrayed as respondents Nos. 3 to 6 in Election Petition No. 2 of 1982. Shri Verinder Kumar the common respondent in these two petitions was declared successful in the election.

The election process started in April 1982 when the dates for making nominations, for the scrutiny of nominations, for the withdrawal of candidatures, the date of poll and the date before which the election was to be completed were notified by the Election Commission under section 30 of the Act. 24-4-1982 was the last date for making nominations, 26-4-1982 for the scrutiny of nominations, 28-4-1982 for the withdrawal of candidatures and 19-5-1982 for Poll.

All the seven candidates filed their nominations in time which on scrutiny were accepted on 26-4-1982. The poll was held on 19-5-1982 as scheduled and the result was announced on 20-5-1982. Shri Verinder Kumar respondent secured 9241 votes which being the highest, he was declared successful. Shri Dalip Singh, the petitioner in Election Petition No. 1 secured 5296 and Shri Yog Raj, the petitioner in Election Petition No. 2 secured 7503.

These two unsuccessful candidates, namely, Shri Dalip Singh and Shri Yog Raj have filed the present Election Petitions, No. 1 of 1982 and No. 2 of 1982 respectively challenging the election of the returned candidate Shri Verinder Kumar respondent. The grounds taken in both these petitions to challenge the election of Shri Verinder Kumar respondent are identical. The case for the petitioners is that the respondent Shri Verinder Kumar was holding the post of a Trained Graduate Teacher under the State of Himachal Pradesh since long before the start of the election process. In that capacity he was drawing his pay and allowances attached to that post and was thus holding an office of profit within the meaning of Article 191 of the constitution. In April 1982 this respondent was posted as Trained Graduate Teacher in the Government High School Sach in the interior of Chamba district which post he continued to hold right till the date of election and even thereafter. The respondent was thus holding an office of profit under the State of Himachal Pradesh on 26-4-1982, the date fixed for the scrutiny of nominations. He, however, concealed this fact from the Returning Officer which led to the improper acceptance of his nomination. The acceptance of his nomination paper and his subsequent election is therefore, void and deserves to be declared as such under section 100(1) (d)(i) of the Act and also under section 100 (1)(a) of the Act as he continued to suffer from that disqualification till the date of election.

Shri Yog Raj, the petitioner in Election Petition No. 2 of 1982 made an additional prayer in his petition that after declaring the election of the respondent as void, this petitioner be declared as duly elected.

Shri Verinder Kumar respondent who alone put in appearance to contest these petitions admits that he was employed as a Trained Graduate Teacher under the State of Himachal Pradesh and had been drawing pay and allowances attached to that post. His plea is that on 13-4-1982 he submitted his resignation from the post held by him. This resignation was sent telegraphically to the Headmaster, Government High School Sach followed by confirmation in writing to the Headmaster, Government High School Sach, the Director of Education, Himachal Pradesh, Simla, the Deputy Director of Education, Himachal Pradesh, Dharamsala and the District Education Officer, Chamba. He had prayed in his letter of resignation that the same be accepted within 24 hours from 13-4-1982. In view of this submission of his resignation letter he was no more in

the service of the State of Himachal Pradesh either on 26-4-1982, the date for scrutiny of nomination or thereafter. The acceptance of his nomination as also his subsequent election were, therefore, perfectly in order and could not be declared as void.

On the pleas of the parties the following issues were struck in both the petitions:

1. Whether at the time of filing of the nomination papers and at the time of scrutiny of the nomination papers, respondent No. 1 was holding an office of profit, being an employee in the Education Department of the State of Himachal Pradesh?
2. If issue No. 1 is proved whether the respondent ceased to hold the office of profit as on the date when the result of the election was announced?
3. Relief.

An additional issue running as under was struck in the case of Election Petition No. 2 of 1982:

1. Whether the Petitioner is entitled to a declaration under section 101 of the Representation of People Act, 1951 that he is a duly elected candidate?

Issues Nos. 1 & 2:

The facts of this case in so far as they are relevant and as emerge from the evidence on record are short and practically undisputed. These facts are that Shri Verinder Kumar respondent initially joined service in the Education Department of the Himachal Pradesh State on 18-10-1966 when he was appointed as a J.B.T. teacher in the pay scale of Rs. 60-175. Subsequently he improved his qualifications and was appointed as a Trained Graduate Teacher in the grade of Rs. 220-500 with effect from 26-7-1970. Ex. R. 7 is the original letter of appointment *vide* which this respondent was appointed as J.B.T. teacher in October, 1966. No separate letter of appointment was, however, issued to him in respect of his subsequent appointment as a Trained Graduate Teacher with effect from 26-7-70. The respondent, however, was never confirmed in service though his seniors as well as his juniors were so confirmed. The respondent thus remained a temporary Government servant throughout.

In April, 1982 the respondent was posted in Government High School Sach in the interior of District Chamba. On 3-4-1982 the respondent had drawn six months advance salary for the period upto September, 1982 against bond Ex. PW 2/B executed by him and in accordance with the rules applicable to the Government employees posted in such interior areas. After drawing this advance salary the respondent proceeded on 10 days casual leave with effect from 5/6-4-1982. He was entitled for 11 journey days for each side along with this casual leave. While the respondent was on such leave, he despatched his letter of resignation (Copy Ex. P.W. 2/A) to the Director of Education through proper channel which was through the Headmaster of his school and the District Education Officer, Chamba. The original letter of resignation was despatched to the Headmaster, Government High School Sach for onward transmission to the Director through the District Education Officer Chamba. Advance copies of this letter of resignation were simultaneously despatched to the Director of Education at Simla, the Deputy Director of Education at Dharamsala and the District Education Officer Chamba. All these despatches were made under registered cover f.c.m. Pagnpur Post Office in District Kangra as is apparent from the Postal receipts Ex. R. 1 to Ex. R. 4. The respondent was never informed either by the Director or by any other authority whether his resignation had been accepted or rejected. The fact, however, remains that the respondent neither joined his duty at Government High School Sach after the expiry of his leave nor did he formally relinquish the charge of his post, nor was his resignation accepted by the competent authority *viz.* the Director of Education.

The advance copy of the letter of resignation which the respondent had despatched direct to the Director was received in the office of the latter on 17-4-1982 and was placed before him on the

next day, that is 18-4-1982. The original letter of resignation which had been sent by the respondent through the Headmaster, Government High School Sach, however, never reached the Director. The Director, therefore, on the basis of the advance copy of the letter of resignation received by him direct from the respondent, addressed a communication to the District Education Officer, Chamba on 30-4-1982. A copy of this communication is found at Ex. P.W. 2/C. In this communication, the Director drew the attention of the District Education Officer Chamba to the respondent's letter of resignation and called upon him to send the necessary information in that connection on the prescribed form and also to intimate if the respondent had been relieved of his charge.

It appears that thereafter a telephonic message was conveyed by the Director to the District Education Officer, Chamba. In response to that telephonic message the District Education Officer Chamba addressed his letter dated 3-6-1982 found at Ex. P.W.2/D to the Director. It appears from this letter Ex. P. W. 2/D that the District Education Officer, Chamba had written to the Headmaster, Government High School Sach to obtain the resignation of the respondent on the prescribed form and to forward the same. No such resignation on the prescribed form was, however, submitted by the respondent and hence the Headmaster sent no response to the letter received by him from the District Education Officer, Chamba.

At this stage another fact which, according to Shri Lekhi the learned counsel for the respondent, has a material bearing on the case, may be noted. This fact is contained in para No. 4 of the letter Ex-P.W. 2/D addressed by the District Education Officer, Chamba to the Director on 3-6-1982. This para 4 reads :

"The Headmaster as well as the teacher concerned were asked by this office to submit the resignation on the prescribed proforma, on the receipt of advance copy of the resignation by this Office. Letter (Office copy) has been sent to the Private Secretary to the Hon'ble Chief Minister. No reply from Headmaster or the individual concerned has so far been received in this Office.

Explaining the contents of this para the author of this letter Shri Bhagwan Dass who appeared as R.W. 2 stated that the letter referred to in this para and of which office copy was allowed to have been sent to the Private Secretary to the Chief Minister was the letter which the District Education Officer Chamba had addressed to the Headmaster asking the latter to send the respondent's letter of resignation on the prescribed form. This witness further clarified that the official record was silent if any such copy of the letter was sent to the Private Secretary to the Chief Minister and that the allegation to that effect contained in para 4 of Ex. P. W. 2/D was based on the information conveyed to him by the Superintendent of his office who claimed to have sent that copy of the letter to the Private Secretary to the Chief Minister.

Before proceeding further it is considered expedient to refer to the terms and conditions which governed the service of the respondent. The respondent had tendered in his evidence the original letter of his appointment found at Ex. R. 7 *vide* which he was appointed as a J.B.T. teacher in October 1966. Obviously the purpose of tendering this letter into evidence was to prove the terms and conditions of his appointment. Para No. 3. of this letter Ex. R. 7 is in the following terms:—

"The vacancy is officiating, but likely to be made permanent in due course. It is, however, made clear to you that this does not in any way carry any promise for your permanent appointment for which you will have to take your name as others who have been similarly required. In case of resignation or discharge on grounds other than the abolition of the post except as result of disciplinary action one month's notice or one month's pay and allowances in lieu thereof is required on either side."

At the stage of arguments, however, Shri Lekhi, the learned counsel for the respondent argued that this letter Ex. R. 7 had been inadvertantly tendered into evidence by the respondent and it

being irrelevant need not be looked into for determining the conditions of service of the respondent. This letter Ex. R. 7, according to the learned Counsel, pertained to the initial appointment of the respondent to the post of J. B. T. teacher in the grade of Rs. 60—175 made in October 1966 and not to his later appointment as a Trained Graduate Teacher made in July, 1970 and from which post the respondent had tendered his resignation. He further stated that no letter containing the terms and conditions of his appointment as a Trained Graduate Teacher had been issued to the respondent and hence none had been produced on the record. The argument of the learned counsel does not appear to be without force. The appointment letter Ex. R. 7 admittedly refers to the appointment of the respondent as J. B. T. teacher made in October, 1966. The respondent was no more holding that appointment when he submitted his letter of resignation as in the meantime he had been appointed to the higher post of Trained Graduate Teacher. It was from this post of Trained Graduate Teacher that he had submitted his resignation Ex. P. W. 2/A. This position was not disputed on behalf of the petitioners either. The letter of appointment Ex. R. 7, therefore, need not be looked into for determining the conditions of service of the respondent.

In the absence of any letter of appointment or other document incorporating the terms and conditions on which the post of Trained Graduate Teacher was offered to and accepted by the respondent, the Central Civil Services (Temporary Service) Rules, 1965 which are admittedly applicable to the respondent must be deemed to govern the conditions of his service. Rule 5 (1) of these Rules is relevant for our purpose and may be extracted in extension:—

- “5. (1) (a) The service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;
(b) The period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice of the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.”

It is in the light of the facts narrated and the language of rule 5 (1) extracted above that we are to determine whether the submission of letter of resignation Ex. PW. 2/A by the respondent could have the effect of terminating his service and if so with effect from which date.

Now the language of rule 5(1) reproduced earlier does show that it provides for termination of service of a temporary employee not only at the instance of the employer but also at the instance of the employee as well. The employee, however, can avail of this opportunity of affecting termination of his service only by giving advance notice of one month of his intention to leave the service to his appointing authority. This rule certainly does not permit or entitle the employee to abruptly put an end to his service at his own volition and by his unilateral act in the manner adopted by the respondent in the instant case. In fact this rule is silent on the point of resignation. The letter of resignation Ex. PW. 2/A submitted by the respondent, therefore, could not in terms of rule 5 (1) have the effect of terminating the service of the respondent.

The question that next arises is whether a temporary employee can tender his resignation from service independent of and in spite of the language of rule 5(1). I can conceive of no good reason why it should not be open to the employee to tender his resignation from service. A letter of resignation is merely an offer to resign and there can be no legal bar for an employee to make such an offer to his employer. Such offer to resign may be conditional or unconditional. It is of course for the employer to accept or reject such an offer and it is only when such an offer

is accepted on the terms in which it has been made that the resignation would become effective and result in termination of service of the employee. So long as a letter of resignation is not accepted on the terms on which it is made it will remain only an offer and entail no legal consequences.

Shri P. N. Lekhi, the learned counsel appearing for the respondent restricted his arguments to the following four points which he gave in writing to the Court before the commencement of his arguments:—

1. The respondent, whose tenure was of a temporary government servant, had the right to resign and that right cannot be defeated by default of the authority competent to accept the resignation.
2. The letter of resignation was a complete and final act and in any event the authority competent to accept the same having not rejected it within one month of its receipt is deemed to have accepted.
3. The termination of the tenure of the respondent as teacher relates back to the date indicated by him in his resignation letter and as from that date there is complete severance of links between the respondent and the office he held as teacher under the government of Himachal Pradesh.
4. The then Chief Minister of Himachal Pradesh (and who now also is) and the authorities i.e. the D.E.O. and the Director of Education, Himachal Pradesh, all acted in concert and conspiracy to defeat the right of the petitioner to offer himself as the candidate at the election held in 1982 to Himachal Pradesh Vidhan Sabha. The Court may not permit the verdict of the electorate popularly expressed to be upset by a blatant abuse of power and authority.

Points Nos. 1 to 3 being inter-connected may be dealt with simultaneously. With respect to point No. 1 I have no dispute that the respondent did have the right to tender his resignation from service and this right in so far as it relates to the submission of letter of resignation is unquestionable. The further contention of the learned counsel, however, that the appointing authority having not rejected the resignation of the respondent within one month, the same must be deemed to have been accepted, is devoid of all force. There is no law or authority which can support such a contention. The only reasoning advanced by the learned counsel in support of this point was that the appointing authority in not accepting the resignation of the respondent within one month is deemed to have acquiesced in the matter and the resignation of the respondent must, therefore, be taken as accepted on account of the acquiescence on the part of the appointing authority, that is, the Director of Education. I am afraid I am unable to find any logic behind this argument either. Before the doctrine of acquiescence can be invoked it must be shown that the person charged with the acquiescence had a duty to speak and his silence or inaction resulted in the other party being misled. There was no duty cast upon the appointing authority to convey the acceptance of the resignation to the respondent within one month from the date of the letter of resignation and hence the charge of acquiescence cannot be successfully levelled against the appointing authority.

Assuming though not conceding that the appointing authority had a duty to convey acceptance of the resignation to the respondent within one month, the facts of this case would show that the appointing authority had not failed to discharge that duty or that the respondent was misled. The letter of resignation Ex. P.W. 2/A was admittedly posted by the respondent from Pragpur under registered cover on 14-4-1982. It was sent to the Headmaster, Government High School at Sach for onward transmission to the Director of Education at Simla. It is in the respondent's own statement made in the witness box as R.W. 1 that normally it takes one month for a postal letter to reach from Pragpur to Sach which is located in the interior of Chamba. From this statement of the respondent it can safely be assumed that an equal period is taken for a postal letter to reach from Sach to Simla. The petitioner thus very well knew that his letter of resignation

could not reach the Director of Education at Simla before the expiry of May, 1982. In the circumstances I fail to appreciate how the Director of Education to whom this letter of resignation could never reach within one month from the date of its posting can be charged with acquiescence and how the respondent was misled.

Again as held by the Supreme Court in *Raj Kumar vs. Union of India* (A.I.R. 1969 Supreme Court 180) undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify the inference that resignation has not been accepted. Such undue delay could not, therefore, give rise to an inference that the resignation had been accepted.

The case may now be looked from yet another angle. The letter of resignation tendered by the respondent is in the following terms:—

“To

The Director of Education,
Himachal Pradesh, Simla.

Through proper channel.

Subject: Resignation from service.

Sir,

I beg to submit humbly that my family circumstances have become such that I can no longer remain in the service of the Education Department. As such my resignation may be accepted with effect from 10 A.M. of 13-4-1982 within 24 hours.”

The language of this letter obviously shows that all that the respondent had offered in this letter was that his resignation be accepted within 24 hours with effect from 10 A.M. of 13-4-1982. This offer was thus open for a limited period of 24 hours expiring with 10 A.M. of 14-4-1982. The letter itself was posted after the expiry of this period within which it was required to be accepted. This letter, therefore, when it was supposed to reach the addressee could not be considered as containing any offer from the respondent which could be accepted. Thus from whatever angle we look into this case, the conclusion is irresistible that this letter of resignation was never accepted and could not have the effect of terminating the services of the respondent.

The fourth point raised by Shri P. N. Lekhi is more emotional than legal or logical. There is nothing on the record to show if there was any conspiracy between the Chief Minister, Himachal Pradesh, the Director of Education, Himachal Pradesh and the District Education Officer Chamba to defeat the respondent's right to offer himself as a candidate at the election. In fact there is no positive and cogent evidence on record to show if any copy of letter on the subject was ever sent to the Chief Minister and if at all it was so sent the circumstances under which and the date on which the same was sent. Shri Bhagwan Das R.W. 2 specifically stated that the official record was silent about the sending of any communication to the Chief Minister and that a mention to that effect was made by him in letter Ex. P.W. 2/D at the instance of the Superintendent of his office who only claimed to have sent a copy of some letter to the Private Secretary to the Chief Minister. This office Superintendent has not been examined to show as to under what circumstances he had sent that office copy to the Private Secretary to the Chief Minister. On the material appearing on the record no such inference as suggested by the learned counsel can be drawn.

In the result I hold that the letter of resignation Ex. P. W. 2/A sent by the respondent was never accepted by the competent authority, that it remained only an un-accepted offer and hence

could not have the effect of terminating the services of the respondent who, therefore, continued to hold the office of profit both on the date of scrutiny of nominations as also on the date of election. Both these issues are decided in favour of the petitioners and against the respondent.

Issue No. 3 framed in Election Petition No. 2 of 1982 was not pressed and hence is found against that petitioner.

As a result of my findings on the common issues Nos. 1 and 2 framed in both the petitions I hold that Shri Verinder Kumar respondent was disqualified to be chosen as a Member of the State Legislative Assembly both on the date of scrutiny of the nomination as also on the date of election as he was holding an office of profit under the State Government on both these dates. I accordingly declare the election of Shri Verinder Kumar respondent to be void under section 100 (1) (a) as also u/s 100 (1) (d) (i) of the Act. Intimation with respect to this decision be conveyed to the Election Commission as also to the Speaker of the Himachal Pradesh State Legislative Assembly and an authentic copy of this decision be also sent to the Election Commission as required under section 103 of the Act.

October 26, 1982

T. R. HANDA,
Judge.

Costs of each Election Petition are assessed at Rs. 750/- which Shri Virender Kumar respondent shall pay to the petitioner of each case.

T. R. HANDA,
Judge.

By order,
O. N. NAGAR,
Under Secretary,
Election Commission of India.

